IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7384 OF 2005

Shri Mukund Ramchandra Kanitkar
(Dead), through his legal heirs,
Smt.Indira Mukund Kanitkar & Ors. ..Petitioners

Vs.

Shri Gangaram Gajanan Kanitkar
and anr. ..Respondents

Mr.P.S.Dani for the petitioners

Mr.P.D.Dalvi for the respondent no.1

CORAM : A.P.DESHPANDE, J

DATED : 7TH NOVEMBER, 2006

P.C.:

1. An order passed by the first appellate court rejecting the application for amendment moved by the appellant/original defendant is challenged by filing this writ petition.

2. The respondents filed a suit for partition against the pre-deceaser in title of the petitioners by name Mukund Ramchandra Kanitkar, since deceased.

3. The suit came to be decreed and thus, regular Civil Appeal is preferred. By the proposed amendment, various pleas for the first time, are raised and the same are to the following effect:

a) That all the ancestral properties which are described in the application are not made subject matter of the partition suit.

b) That some of the properties (which are not specifically described) are exclusively owned (self acquired) properties of defendant no.1 and lastly

(c) that the heirs of deceased Mahadu so also heirs of Ramchandra and Gopal who are named therein are not impleaded as party defendants, rendering the suit untenable.

4. Suffice it to state that for the first time, the petitioners / appellants are trying to raise these pleas without their being any foundation in the written statement in that regard.

5. The learned counsel for the respondents has

pointed out that as a matter of fact all the properties which are referred to in the amendment application are the subject matter of partition suit and hence, the objection raised in the proposed amendment is devoid of any merits. It is pointed out that the pleas raised are not legal pleas as no factual foundation is brought on record so as to enable the first appellate court to consider the said pleas. It is pointed out that no description of the properties is given in the amendment application, which are claimed to be self acquired properties of defendant no.1 and only vague averments are made.

6. Perused the application for amendment. So also the impugned order passed by the appellate court. No fault can be found in the order. In the result, writ petition is summarily rejected.

(SHRI A.P.DESHPANDE, J)